

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON DOYLE,

NO. CV-10-0030-EFS

Plaintiff,

ORDER GRANTING AND DENYING IN
PART DEFENDANT CITY OF
QUINCY'S MOTION FOR PROTECTIVE
ORDER

5

WILLIAM GONZALES; DAN W.
DOPPS; SCOTT D. JONES; and
the CITY OF QUINCY,
WASHINGTON.

Defendants.

A hearing occurred in the above-captioned matter on February 7, 2011, in Richland. Plaintiff Aaron Doyle was represented by Garth Dano and William Gilbert. Jerry Moberg appeared on behalf of Defendants William Gonzales, Dan Dopps, Scott Jones, and the City of Quincy ("City"). Before the Court was the City's Motion for Entry of Protective Order in Response to Plaintiff's First Requests for Production (ECF No. [75](#)),¹ which asks for a protective order under Federal Rule of Civil Procedure 26(c) because Plaintiff's requests for production (RFPs)

¹ Counsel may have benefitted from additional discussions before filing this motion; nonetheless, the Court believes Court intervention was necessary and thus considered the motion. LR 37.1.

1 relating to electronically-stored information (ESI) are 1) overly broad,
 2) duplicate Plaintiff's public-records requests, and 3) create an undue
 3 burden of expense and production of confidential, privileged, or
 4 otherwise protected information. The City asks the Court to require ESI
 5 production to be done in phases: as identified in its proposed order (ECF
 6 No. 75-1). Plaintiff agrees that phased-ESI discovery is appropriate, yet
 7 wants to ensure that it receives all relevant ESI. After reviewing the
 8 submitted material and relevant authority and hearing from counsel, the
 9 Court was fully informed. This Order supplements and memorializes the
 10 Court's oral ruling granting and denying in part the City's motion.²

11 **A. Background**

12 On September 3, 2010, Plaintiff served Defendants with eighty-one
 13 RFPs, which seeks email, word processing documents, and other information
 14 created on and stored in City computers and servers. On October 21,
 15 2010, Plaintiff corrected a scrivener's error to accurately reflect that
 16 there are eighty-two RFPs.³ (ECF No. 80-1.)

17 Defendants did not timely respond. The City did hire Larry Johnson,
 18 the owner of Electronic Data Evidence (ECF No. 77), to make digital
 19 copies of the City Police Department drives (main computer, laptop, and
 20 server). There is approximately one trillion bytes of ESI.

21

22 ² At the hearing, the Court and counsel also discussed possibly
 23 resetting the August 2011 trial to January 5, 2012. Counsel are to file
 24 a motion if they desire a trial continuance.

25 ³ The Court notes that the City ought to have timely answered RFPs
 26 1-5 (policies and procedures) and 11-13 (experts).

1 On December 16, 2010, counsel met to discuss discovery issues for
2 about two hours. Although they did not discuss every single RFP, they
3 did discuss whether Plaintiff's RFPs are overly broad. The parties were
4 unable to agree on a procedure for producing ESI. The City filed this
5 motion on January 10, 2011. (ECF No. 75.) On January 13, 2011, counsel
6 met again to discuss discovery issues.

7 **B. Standard**

8 A district court has wide discretion in controlling discovery.
9 *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). Moreover,
10 pretrial discovery is ordinarily "accorded a broad and liberal
11 treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). A party may
12 object to a request for production; however, the grounds for objection
13 must be stated with specificity. Fed. R. Civ. P. 34(b)(2). Absent a
14 valid objection, the production of evidence can be compelled regarding
15 any matter "relevant to the subject matter involved in the action" or
16 "reasonably calculated to lead to the discovery of admissible evidence."
17 *Id.* at 26(b)(1). This broad discovery right is based on the general
18 principle that litigants have a right to "every man's evidence," and that
19 "wide access to relevant facts serves the integrity and fairness of the
20 judicial process by promoting the search for truth." *Shoen v. Shoen*, 5
21 F.3d 1289, 1292 (9th Cir. 1993).

22 Yet, a responding party may seek a protective order to protect it
23 from "annoyance, embarrassment, oppression, or undue burden or expense."
24 Fed. R. Civ. P. 26(c)(1). In pertinent part, a protective order may
25 protect a party from disclosing ESI if it is not "reasonably accessible
26 because of undue burden or cost." *Id.* at 26(b)(2)(B).

1 **C. Analysis**

2 Plaintiff's ESI requests, if not appropriately limited, are unduly
3 burdensome for a small town such as Quincy with limited financial and
4 technological resources. *See, e.g.*, RFP 6 (asking the City "[p]roduce
5 a full and complete copy (snapshot) of the hard drive from the
6 computer(s) issued to and being used by each of the below referenced City
7 employees from August 1, 2007 [sic] to the present date" for the ten
8 listed individuals). The City's limitations, however, do not protect it
9 from its duty to disclose relevant ESI. Yet, the limitations are factors
10 to consider in determining how to best structure ESI discovery. Fed. R.
11 Civ. P. 26, advisory comm. notes (2006).

12 To limit the City's financial burden, the Court determines that ESI
13 discovery should be phased. The City proposes a phased ESI-discovery
14 process that included ten list terms and then allowed Plaintiff, upon a
15 showing of good cause, to provide additional search terms until both
16 Plaintiff and the City were satisfied with the disclosures. The City's
17 proposal is too restrictive and improperly places the burden of showing
18 good cause on Plaintiff, when it is the City that must certify that its
19 ESI production is complete and accurate. *Id.* at 26(g).

20 Instead, the City is to establish search parameters using the
21 following terms: 1) Aaron, 2) Doyle, 3) terminate, 4) lawsuit, 5) suit,
22 6) complaint, 7) quit, 8) retaliate, 9) retaliation, 10) fraud, 11)
23 waste, 12) abuse, 13) FMLA, 14) transfer, 15) harass, 16) discriminate,
24 17) discrimination, 18) Gonzalez, 19) Meinzer, 20) policy, 21) Ackerman,
25 22) Fretheim, 23) grievance, 24) K-9, 25) MaryKay, 26) late, 27) Garcia,
26 28) Darren, 29) Smith, 30) safety, and 31) concerns. Plaintiff's

1 counsel may then review the search parameters and provide suggestions.
2 Once the search is run, defense counsel is to advise Plaintiff's counsel
3 whether the search returned a) a reasonably reviewable list of documents
4 and emails and, if so, defense counsel shall begin reviewing the ESI for
5 protected or privileged information, or b) an unreasonable amount of
6 documents and emails and request that Plaintiff's counsel assist in
7 restructuring the search parameters to reduce the number of "hits."

8 The Court denies as moot the City's motion for protective order as
9 it relates to the backup tapes. Plaintiff advised that the City need not
10 provide information on the backup tapes until the phased-ESI discovery
11 shows that a document or email may only be found on the backup tapes.

12 **D. Conclusion**

13 For the reasons given above and at the hearing, **IT IS HEREBY**
14 **ORDERED:**

15 1. The City's Motion for Entry of Protective Order in Response to
16 Plaintiff's First Requests for Production ([ECF No. 75](#)) is **GRANTED** (ESI-
17 discovery to be accomplished in phases), **DENIED** (proposed search
18 parameters are too restrictive), **AND DENIED AS MOOT** (backup tapes) **IN**
19 **PART.**

20 2. Defense counsel shall formulate search parameters for the City
21 servers and employees (Dan Dopps, Scott Jones, Lisa Rowland, Sal Mancini,
22 Tim Snead, Jim Hemberry, Richard Ackermann, Gene Fretheim, Aaron Doyle,
23 and Tom Clark) laptop and mainframe drives utilizing the following key
24 words: 1) Aaron, 2) Doyle, 3) terminate, 4) lawsuit, 5) suit, 6)
25 complain, 7) quit, 8) retaliate, 9) retaliation, 10) fraud, 11) waste,
26 12) abuse, 13) FMLA, 14) transfer, 15) harass, 16) discriminate, 17)

1 discrimination, 18) Gonzalez, 19) Meinzer, 20) policy, 21) Ackerman, 22)
2 Fretheim, 23) grievance, 24) K-9, 25) MaryKay, 26) late, 27) Garcia, 28)
3 Darren, 29) Smith, 30) safety, and 31) concerns.

4 3. No later than **5:00 p.m. on Wednesday, February 9, 2011**, defense
5 counsel shall disclose to Plaintiff's counsel the proposed search
6 parameters for the first phase of ESI discovery.

7 4. No later than **5:00 p.m. on Friday, February 11, 2011**,
8 Plaintiff's counsel shall provide defense counsel with suggested
9 modifications to the search parameters.

10 5. Once Plaintiff's counsel has provided the suggested
11 modifications, Defendants' expert shall promptly run the search. The
12 Court understands that the turn-around time will depend upon the number
13 of retrieved documents and emails.

14 6. Once a reasonable search is conducted, the City's counsel may
15 review the results for privileged, confidential, or otherwise protected
16 information.

17 7. The City shall provide Plaintiff with the search results in
18 accordance with the "Form of Production" directions below.

19 8. The City shall also provide, if necessary, a privilege log.

20 9. Additional phases of ESI discovery shall proceed on this same
21 basis, until the City certifies that its ESI production is complete and
22 accurate. Fed. R. Civ. P. 26(g).

23 10. Form of Production:

24 a. Format. All data, files, and communications that are
25 ordinarily stored on electronic media including, but not limited to,
26 electronic mail (and attachments), word processing documents, and spread

1 sheets shall be produced in native format, but may be produced in .pdf
2 format if agreed upon by parties.

3 b. Production Numbers and Designations. Electronic documents
4 shall be marked with appropriate production numbers and confidentiality
5 designations upon the medium in which the documents are produced.

6 c. Production Media. Unless otherwise agreed, ESI shall be
7 produced on a portable hard drive, compact disc(s), or digital versatile
8 media (DVD).

13 e. Claw-Back. ESI production is subject to the parties'
14 inadvertent-disclosure-return rights under Rule 26(b)(5), Federal Rules
15 of Evidence, the practices of this Court, and the ethics rules governing
16 inadvertent disclosure of privileged material.

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter
18 this Order and to provide copies to counsel.

19 **DATED** this 10th day of February 2011.

21 s/Edward F. Shea
22 EDWARD F. SHEA
United States District Judge

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